Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
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High Cost Universal Service Support	)	WC Docket No. 05-337
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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
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COMMENTS OF GVNW CONSULTING, INC.

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Executive Summary

The time has come to put an end to the irrational and costly system of supporting wireless carriers based on the cost of wireline incumbents. A large number of CETCs are wireless carriers. Wireline and wireless carriers provide different types of services and operate under different rules and regulations. Their cost structures are not the same. To allow a wireless CETC to receive the same amount of funding as the wireline carrier, without any reference to their cost structures, is artificial.

The WiCAC proposal is intended to replace the identical support rule with Wireless Carrier Actual Cost (WiCAC). The WiCAC concept comports with the tentative conclusion stated in paragraph 5, which states in part "*we further tentatively conclude that a competitive ETC should receive high-cost support based on its own costs, which better reflect real investment in rural and other high-cost areas of the country, and which creates greater incentives for investment in such areas.*" Wireless Carrier Actual Cost (WiCAC) is a cost-based system to calculate the equivalent of wireline carrier high-cost loop support for wireless ETCs. This is a cost-based solution that provides a potential support mechanism to wireless carriers that seek to maintain a nationwide rate for customers.

Recent actions, especially in ex parte presentations by wireless carriers, seem to indicate a desire to prolong the orderly transition from the identical support era. The Commission should not permit these delaying tactics. If the Commission selects WiCAC as a proper course of action, the WiCAC proposal would be able to be implemented within the recommended timeframe for implementation of long-term solution sets.

In one sense, reverse auctions appears to be a proposal to ameliorate problems resulting from the largest error made in implementing TA 96: the identical support rule. We submit that addressing that problem first is a more prudent public policy direction. It would also appear from the data currently in the record that reverse auctions do not constitute the competition that was envisioned in TA 96. One may argue that such competitive bidding is actually anti-competitive per TA 96, at least with respect to a customer's access to competitive alternatives. In the proposed reverse auction approaches, carriers are only on an equal basis once every bidding cycle. If an existing rural wireline carrier were to be unsuccessful in a reverse auction proceeding, it is unclear as to how the Commission would intend to address confiscation.

The Commission should bear in mind that implementing a reverse auction approach for rural carriers could have unintended consequences, including an inability to raise capital and evolve appropriate levels of service. Rural carrier telecommunications networks necessitate investing large amounts of capital in inherently long-lived plant assets. These investments are possible when lenders have a reasonable certainty of debt repayment and investors/stockholders/cooperative members are afforded an opportunity to receive a compensatory rate-of-return. Reverse auctions create uncertainty and would certainly not provide sufficient incentive for efficient, long-term investment strategies that are prerequisite to infrastructure deployment in low density, high cost to serve areas of the country.

Reverse auctions would create no incentive to invest after the contract, and would be especially acute in the later years of a contract cycle. For example, carriers would be

unable to justify investing in long-lived assets in the eighth or ninth year of a ten year contract period when faced with the possible loss of support in year eleven.

With respect to cost modeling, the challenges are exacerbated by the fact that the advances of the last decade require a reexamination of just what is "the" forward-looking technology that should be modeled. With respect to disaggregation, the record to date contains anecdotal evidence that some lines appear to be reported based on the level of support potentially available to that carrier, as opposed to where the customer resides or maintains an address of record. If the Commission were to adopt some form of mandatory disaggregation, the impact would be analogous to removing a fist from a swimming pool. Once the fist is removed, there is no evidence that it was ever there. Mandatory disaggregation without attention to where CETCs are reporting lines would have a similar indiscernible impact.

Whatever approach is recommended and ultimately implemented for CETC support should include provisions so that the method is both able to be reviewed or audited by third party reviewers and requires the CETCs to be accountable for the use of any support provided.

The current proposal for the broadband fund is biased toward carriers that have not previously invested in broadband infrastructure, including some of the largest carriers in the country. It seems ironic that several of the carriers with the most financial resources at their disposal may be the biggest initial beneficiaries of a separate broadband support fund, after previously being unwilling to invest in an expanded broadband infrastructure outside their metropolitan high-density service areas.

INTRODUCTION AND BACKGROUND

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America.

The purpose of these comments is to respond to the three USF Notices[1] released on January 29. One of the reasons that universal service is working today is that virtually all customers are accounted for within some eligible carrier's service territory. These "providers of last resort" (POLR) stand ready to serve even the most remote and isolated customers. But, this universally available service comes with a cost. Specifically for rural carriers, in a rate-of-return regulatory environment, the overarching principle that the Commission should adhere to is that rate-of-return carriers are entitled, as a matter of law, to a full recovery of their costs in providing interstate services.

We applaud the Commission for its efforts in addressing these key universal service issues. We respectfully request that as rules are formulated by the Federal Communications Commission, that the circumstances present in meeting the needs of customers in high cost to serve rural areas are carefully evaluated and factored into the final decisions.

[1] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (Joint Board Comprehensive High Cost Recommended Decision Notice), FCC 08-4 (Identical Support Rule Notice), FCC 08-5 (Reverse Auctions Notice).

REPLACING THE IDENTICAL SUPPORT RULE SHOULD BE A PRIORITY FOR THE COMMISSION

Prior to the release of the three Notices, the Commission imposed certain conditions on Alltel in its merger order[2] that related to the level of support to be received. In footnote 44 of that Order, the Commission stated in part:

For competitive ETCs providing service to rural study areas, a cost per line would be developed for each competitive ETC for each incumbent study area that it serves. Support could be determined by comparing the competitive ETCs cost per loop incurred to provide the supported services to the national average cost per loop developed by the National Exchange Carrier Association (NECA) pursuant to section 36.613 of the Commission's rules, as adjusted to accommodate the cap on incumbent high-cost loop support.

As a practical result, Alltel and other carriers impacted by similar orders have a choice: Either calculate their own cost-based support or accept a limitation on support received. Most observers believe this addresses about half of the problem of CETCs receiving support based on another carrier's costs.

The Commission has posed questions in this NPRM[3] concerning how to calculate support for competitive eligible telecommunications carriers. While the issue is of paramount importance, it is not a new issue[4]. On March 1 of last year, Commissioner Copps testified before the Senate Commerce Committee on the topic of USF reform. In recommending that the identical support rule be eliminated, he stated in part: "…*the time*

[2] Applications of ALLTEL Corporation for Consent to Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 07-128, Memorandum Opinion and Order, released October 26, 2007.
[3] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (Joint Board Comprehensive High Cost Recommended Decision Notice), FCC 08-4 (Identical Support Rule Notice), FCC 08-5 (Reverse Auctions Notice).
[4] There are a large number of commenters in the record to date that have expressed a broad base of support for the Joint Board recommendation of an interim cap on CETC support and with the concept of eliminating the identical support rule. This broad base of support includes Public Utility Commissions including urban states (Ohio); consumer groups (NASUCA); large (Verizon and Verizon Wireless), medium (TDS) and small (GVNW Consulting filing) carriers; state associations (Alaska Telephone Association) and national associations including the NTCA, WTA and OPASTCO.

has come to put an end to the irrational and costly system of supporting wireless carriers based on the cost of wireline incumbents."

Previously[5], Commissioner Adelstein addressed USF issues in the following manner: "*A large number of CETCs are wireless carriers. Wireline and wireless carriers provide different types of services and operate under different rules and regulations. Their cost structures are not the same. To allow a wireless CETC to receive the same amount of funding as the wireline carrier, without any reference to their cost structures, is artificial.*"

These concerns remain valid in 2008 as the Commission seeks the replacement for the identical support paradigm. Whatever approach is ultimately implemented should include provisions so that the method is both able to be reviewed or audited by third party reviewers and requires the CETCs to be accountable for the use of any support provided.

Competitive entry that is motivated only by the possibility of universal service support based on other carriers' costs does not serve the public interest in a prudent manner. The recent rapid rise in CETC support has borne out that the USF is a scarce national resource that should be monitored in order to meet the public interest.

At paragraph 13 of the NPRM on identical support, the Commission has requested comments on the WiCAC proposal submitted on July 12, 2007. As a significant contributor to this proposal[6], we offer some rationale and explanation surrounding WiCAC. References to paragraph numbers in this section refer to the identical support NPRM.

[5] OPASTCO 2004 Annual Winter Convention
[6] Letter from Jeff**ry** H. Smith to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337 and CC Docket No. 96-45 (filed July 12, 2007)(WiCAC Proposal Letter).

WiCAC provides the logical path to support the tentative conclusions

At paragraph 1, the Commission tentatively concludes "*that we should eliminate the Commission's current 'identical support' rule. . . [and] also seek comment on our tentative conclusion to provide support to a competitive ETC based on its own costs of providing the supported services*." The WiCAC proposal is intended to replace the identical support rule with Wireless Carrier Actual Cost[7] (WiCAC). The WiCAC concept comports with the tentative conclusion stated in paragraph 5, which states in part "*we further tentatively conclude that a competitive ETC should receive high-cost support based on its own costs, which better reflect real investment in rural and other high-cost areas of the country, and which creates greater incentives for investment in such areas.*"

This WiCAC proposal is intended to provide an auditable[8] and administratively workable solution to the vexing problem of wireless CETCs receiving support based on another carrier's costs. The WiCAC proposal is geared to provide an identical **basis** of support related to the High-Cost Loop fund. By providing support on an identical basis[9], we achieve the level of regulatory parity desired by the Commission and Joint Board.

[7] Wireless Carrier Actual Cost (WiCAC) is a cost-based system to calculate the equivalent of wireline carrier high-cost loop support for wireless ETCs. This is an incremental cost-based solution that provides a potential support mechanism to wireless carriers that seek to maintain a nationwide rate for customers.

[8] A wireless carrier is not required to be a CETC, and therefore be required to submit data to the Administrator in order to be eligible for a cost-based USF recovery. However, a wireless carrier that desires to receive cost-based USF recovery would be required to become a CETC and submit WiCAC data to USAC.

[9] By providing support on an identical **BASIS**, we seek to avoid the issue raised by the Commission at paragraph 10 of the NPRM, where the Commission offers that "*Because a competitive ETC's per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act's universal service goal of improving access to telecommunications services in rural, insular, and high-cost areas." (footnote omitted*)

The rationale for WiCAC

One of the objections of wireless carriers is that to impose the complexity of Part 32 accounting would be "overly burdensome" and unfair.[10] In virtually every other context, including presentations made in order to ensure they received ETC status, wireless carriers assert that they are staffed by capable and talented individuals. We believe that such individuals are capable of mapping to twenty-three (23) accounts and posting the account balances to an algorithm data request that is transmitted to the fund Administrator[11].

A large number of CETCs are wireless carriers. Wireline and wireless carriers provide different types of services and operate under different rules and regulations. In the approximately 800 study areas where wireless carriers receive USF support, carriers not receiving support provide substantially more wireless coverage. So, despite collecting over $637 million in subsidies in 2006 for providing service in the lower 48 U.S. states, wireless CETCs provide little incremental coverage[12]. In addition, contrary to the claims of wireless carriers, when holding constant key factors that affect availability of wireless service, there is no statistical correlation between the amount of USF support paid and the proportion of the population or land area that has wireless coverage.

[10] Comments in CCD No. 96-45 and WCD No. 05-337, May 31, 2007, see for example Alltel, page 20; Sprint Nextel, pages 10-13. See also CTIA at page 9, where CTIA erroneously asserts that there would be "*indeterminable new reporting requirements*", which does not comport with a request to isolate data in 23 accounts. See also Sprint Nextel at page 11. Sprint opines that "*it is unclear how certain wireless-specific costs – spectrum acquisition costs, roaming fees, interconnection charges, and handset subsidies, to name only a few – would be categorized.*" This is a red herring. WiCAC has captured spectrum acquisition costs in the algorithm, and all carriers experience interconnection charges. Handset subsidies have never been recovered from a high-cost loop support fund. Such arguments from Sprint characterize the modus operandi of some wireless carriers – avoidance of accountability.

[11] Why does the algorithm specify the Administrator as USAC as opposed to NECA?
This is due to the current bifurcated arrangement wherein NECA handles Part 36 USF while USAC is assigned the Part 54 portion. The recommended WiCAC rules are reflected as changes to Part 54.

[12] Nicholas Vantzelfde, *The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds*, Criterion Economics (June 2007), page 1.

Objections on the part of wireless carriers that they would be unable to capture data for less than two dozen accounts appear to be disingenuous. It is hard to believe that these carriers do not have some level of budgeting[13] against which to measure their progress. One of the benefits[14] of moving wireless carriers to the WiCAC for HCL support is that a cost-based approach to high-cost funding would establish "a modicum[15] of competitive neutrality in the high-cost system" for ETCs and CETCs. Another benefit is that it could ameliorate the misreporting on lines by CETCs.[16]

How WiCAC works

The WiCAC proposal provides the Commission with an equitable approach to replace the current identical support rule with an "identical basis" approach for the high-cost loop fund that is known as the Wireless Carrier Actual Cost (WiCAC). In simplest terms, this WiCAC proposal replicates the current wireline HCF algorithm in a manner that recognizes the differences between wireline and wireless architecture[17].

[13] We anticipate that if the Federal Communications Commission informed Congress that they had spent their budget monies, but could not account for it properly within 23 accounts, that Congress would be less than sanguine with such an assertion.
[14] We support the Commission's tentative conclusion at paragraph 23 that CETCs should no longer receive ICLS and at paragraph 24 that CETCs should no longer receive LSS.
[15] WCD No. 05-337, Reply comments of OPASTCO, July 2, 2007, pages 13-14. OPASTCO further states: "*If competitive ETCs do not want to provide and support their costs and be held accountable for the use of publicly provided funds – just as rural ILECs are – they can choose not to seek ETC designation.*"
[16] WCD No. 05-337 and CCD No. 96-45, Comments of GVNW Consulting, May 31, 2007, page 13: "*The record to date contains anecdotal evidence that some lines appear to be reported based on the level of support potentially available to that carrier, as opposed to where the customer resides or maintains an address of record.*"
[17] When the HCL program was initiated, wasn't the implicit assumption that local rates varied from one study area to the next? How can the HCL algorithm be used for wireless carriers who have established nationwide rates? Put another way, what universal service goals are advanced by this program? We agree that there was an implicit assumption that local rates varied from one study area to the next. The initial HCL plan was developed to take this into consideration by putting a cap on the amount of Loop cost that could be assigned to the State jurisdiction, then giving significant latitude to the states in determining how much of the state cost is picked up through local rates vs. toll/access/EAS. The mechanism was designed so that once a company reached 150% of the National Average, all additional (incremental) cost was assigned to the interstate jurisdiction with 75% of the incremental cost being recovered through USF

For example, the proposed 23 accounts in a new 32.8000 are based on the investments a wireless carrier must make[18] (e.g., towers, spectrum acquisition[19]). Several modifications are proposed to Part 54 to enable cost-based wireless carrier support. Based on the results of the WiCAC algorithm, wireless CETCs could then be compared against the current National Average Cost per Loop (NACPL) to determine support eligibility, or used in a separate mobility funding mechanism.

Responding to concerns from wireless ETCs that the Part 32 system of accounts is too difficult to implement, the WiCAC proposal limits accounting required to 23 Part 32 accounts: 12 investment and reserve accounts and 11 operating expense and tax accounts. The numbering system that is recommended draws in part from the prior Part 31 account nomenclature in order to distinguish CETC accounts from ETC accounts.

The July, 2007 ex parte filing included both recommended Part 32 and Part 54 rule changes. In the recommended Part 32 rules, the account descriptions include notations as to what line number of the WiCAC input is the proper destination for the mapped accounting amounts.

<u>WiCAC is flexible to the Commission's policy deliberations</u>

WiCAC is designed to be flexible with regard to Commission policy decisions regarding CETC study areas, benchmarks, treatment of different sizes of carriers, and with regard to how to replicate a wireline carrier's loop percentage of total investment.

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and 25% through the Common Line allocation. The original mechanism recognized that support should only be provided for high cost, and that if a company's unseparated loop cost did not exceed 115% of the National Average, the company would get no HCL support.

[18] WiCAC comports with the Commission's tentative conclusion at paragraph 17 that "*wireless handsets should not be treated as an allowed expense."*

[19] Spectrum acquisition costs are discussed at pages 17-18 of these comments.

The question has been posed as to how study areas for CETCs will be defined for a cost-based support mechanism[20] and will each wireless carrier be assigned one study area per state? In the WiCAC proposal, the definition of study area would hinge on the states' ETC certification. If the State certified multiple study areas in granting the ETC status, those same study areas would be used for computing the proposed WiCAC HCL support. If a single study area was designated for the ETC status, the single area would be used for the WiCAC computation. We believe this is an area open for public policy debate.

We are aware that some wireless carriers assert that they are unable to provide financial data on a state by state basis. We find that curious given that they were able to demonstrate their financial capability on a state by state basis. However, the WiCAC model would accommodate the calculation of eligibility on a larger basis than an individual state area. In fact, if necessary, WiCAC could compute data for the entire national operations of a large wireless provider.

Since the ex parte was filed last July, some have asked why should we use the same threshold for support ("benchmark") as is used for the rural wireline carriers, as this is driven each year by the cap, which in turn is driven by how much loop investment is made by wireline carriers. Might it be arbitrary and capricious to apply this same cap, derived only from wireline data, to wireless carriers, particularly as it goes up each year?

[20] The WiCAC refers specifically to wireless carriers that are ETCs. What about wireline CETCs? If the Commission were to adopt the WiCAC mechanism for wireless carriers, we recommend they include wireline CETCs under the existing mechanism that is applied to wireline ETCs. These wireline CETCs would only need to map data to the existing Part 32 accounts that are used by wireline ETCs that complete the current algorithm data request.

The WiCAC methodology currently uses the same threshold "benchmark" as the rural wireline companies. We believe this is a good starting point for the public policy debate and we are open to alternative levels for the threshold if other levels are more equitable and in line with managing the limited resources associated with the Universal Service Fund. With regards to the arbitrary and capricious argument, using the wireline cap for the wireless companies is no more relevant for the wireless companies than it is for the wireline companies. The current cap is not administered using a national average that is reflective of the costs of the wireline carriers. The "fictitious" or "fabricated" national average used in computing HCL distributions has no basis in the actual cost of the participating companies. It is computed strictly to limit the distributions to the funds available as a result of the fund cap. The wireline companies would have the same arguments for the arbitrary and capricious treatment as would the wireless companies.

With respect to different treatment for small versus large wireless carriers, is there any difference in recovery from the algorithm based on wireless carrier size in terms of number of lines served? The current wireline HCL program differentiates between carriers with more than 200,000 lines, and those with fewer lines. Except for the different levels embedded in the corporate operations limitation portion of the algorithm, all wireless carriers are treated equally under the WiCAC mechanism.

Our initial thought was that wireless carriers with over 200,000 lines would likely have the economies of scope and scale so that there average cost per voice line might not reach the threshold. We believe this should be open for public policy debate and perhaps the Commission could gather enough data to determine if the public interest could better be achieved by setting a line count threshold. The basic USF goal that is advanced by the

WiCAC methodology is that wireless carriers should only get support for "High Cost". We recognize that this opens a number of public policy issues and we believe the Commission will have an active debate regarding the public policies[21] used in determining the methodologies that best accomplish the desired policy goals.

One of challenges in developing an identical basis of support for wireless carriers is to replicate the loop to total investment ratio that is used in the current wireline HCL support algorithm[22]. How does WiCAC replicate this type of ratio for wireless carriers?

In the algorithm, the ratio developed is for the study area using the traffic (Minutes of Use - MOUs) that is both originated and terminated within the MSA to the total traffic within the study area. For study areas outside an MSA, the factor will be developed using the intrastudy area traffic compared to total traffic. This amount is the input for line 710 of the WiCAC algorithm. If the company does not have the capability of measuring the MOUs or chooses not to measure, a default ratio of 0.5 will be used at line 710 of the WiCAC algorithm.

[21] Although the initial WiCAC ex parte did not differentiate between sizes of wireless carriers, the Commission may find that it is necessary to create a different metric or tier within WiCAC for some of the nation's smaller wireless providers in order to meet its desired public policy objectives. We anticipate that it could be necessary to analyze empirical data in order to reach such a conclusion.

[22] The HCL program was instituted to ameliorate harm associated with a 1980's separations change. At that time, the interstate basic allocation for loop was set at a fixed factor of 25%. The HCL program was set up at the same time to pay as much as 75% of the total unseparated cost. In other words, the combination of interstate jurisdictional assignment and USF now pays up to 100% of incremental costs over the threshold. But wireless carriers are not subject to separations and do not have any 25% interstate allocation. Can the analogy between wireline and wireless hold in such circumstances? The initial mechanism did not provide 100% recovery of the loop cost from interstate. It only provided 100% recovery of the cost above the threshold (150% of National Average). We believe the analogy between the wireline and wireless holds true because under the WiCAC, the same theory of assigning a minimum amount to basic services is accomplished before the Support kicks in. It is true the wireless carriers are not required to "assign" the 25% of loop plant to interstate, but they do have the option of "assigning" it there if they want. Leaving them the flexibility of "assigning" to either interstate or state should give them a pricing advantage without giving them additional support to cover the below average portion of their cost.

Spectrum Recovery Issues

The WiCAC model includes the ability for wireless CETCs to include spectrum acquisition costs in the algorithm as noted below:

32.8242 Spectrum Costs

(a) This account shall include amounts related to spectrum acquisition, maintained by vintage.

(b) This amount shall be input on line 255 of the WiCAC algorithm.

32.8608 Depreciation Expense

(a) This account shall include amounts related to the depreciation expense of capitalized costs included in Accounts 8122 through 8242, inclusive.

(b) This account shall include detailed sub accounts so as to permit the following input for the WiCAC algorithm (noted parenthetically below are the WiCAC input line numbers):

General Support (no input)
Wireless Switching (line 510)
Operator System Equipment (line 515)
Wireless Transmission (line 520)
Hand Sets (no input)
Spectrum Acquisition (line 530)
Other (no input)

(c) For input into the WiCAC algorithm for line 530, the depreciation rate to be applied to the spectrum acquisition account is no greater than 5% per annum. If the carrier has adopted Statement of Financial Accounting Standard (SFAS) No. 142, Goodwill and Other Intangible Assets, amortization of the wireless license may have ceased as of a certain date if a determination was made that they are indefinite lived intangible assets. If this is the case, no additional amortization is permitted for WiCAC.

In the Notice, the Commission states: "*For example, although spectrum acquired through an auction or purchased on the open market may be a legitimate business expense, it is not clear that we should allow carriers to earn a return of 11.25 percent on these investments in perpetuity if spectrum costs are not depreciated*." (The footnote references SFAS No. 142 and its concomitant impairment test)

We encourage the Commission to closely examine these issues.

Transition Plan

In the July 12, 2007 ex parte for the WiCAC proposal, we detailed one view of an implementation plan that was based on what we understood to be the Joint Board and Commission's desire to move deliberately toward resolution of the identical support dilemma. After WiCAC was filed, wireless carriers countered with ex partes that asserted that the proposed implementation timeline was not achievable.

The Commission must decide what pace of transition to the replacement for identical support is appropriate, recognizing that there is an incentive for wireless CETCs to delay implementation of WiCAC.

Illustrative data for carriers subject to WiCAC

In order to test the results that would be produced by the WiCAC model, we computed the data for a wireless carrier in the Midwest that has invested in towers and deployed enough infrastructure to ensure a quality service to its customers.

The results of the pro forma WiCAC analysis indicate that support would be available at a level of roughly $1,350,000, demonstrating that the model does produce support levels IF a company invests in infrastructure.

REVERSE AUCTIONS

The Commission has requested comments on the reverse auction proposals currently in the record. Several of the Commissioner statements accompanying the Notices are reflective of the problems inherent with a transition to a reverse auction proposal. Commissioner Copps highlights some of the key unanswered questions in the following excerpt:

"…our review raised in my mind many more questions than it answered. For instance, how do we ensure that the winning bidder provides adequate quality of service? What happens if the winner later decides it is no longer profitable to continue its operation? And who will be responsible for establishing the rules and enforcing them? Ironically, this purportedly market-based approach strikes me as hyper-regulatory. For these reasons, I must dissent from the NPRM's tentative conclusion that the Commission should develop an auction mechanism to determine high-cost support."

In the initiation of a recent docket, Commissioner McDowell offered a statement that is relevant to this proceeding. In his statement accompanying the Notice of Inquiry in WC Docket No. 07-52 (FCC 07-31), the Commissioner states in part: "***But we also must resist the temptation to impose regulations that are based merely on theory***." This is particularly important with respect to any proposed reverse auction approach.

Commissioner Adelstein's statement offered the following observation:

" To that end, I am also concerned about the impact of reverse auctions and whether such mechanisms can provide adequate incentives for build out in Rural America. For these reasons, I dissent from the tentative conclusions in the separate Reverse Auctions Notice. . . .I cannot support these premature tentative conclusions, and would have preferred a more balanced presentation of the potential disadvantages of such an approach."

The purpose in this section of this comment filing is to assist in providing a more balanced presentation of the potential disadvantages of such an approach for the record.

The Provider of Last Resort concept from the Recommended Decision is not consistent with a reverse auction experiment

In its Recommended Decision, the Joint Board supports the continuation of support funding in a similar manner to current practices for providers of last resort. At paragraph 19 of the Recommended Decision, the Joint Board states in part that it "*does not today offer the outline of any new and unified system. . . We have not reached agreement on specific changes to the legacy support mechanism that today provides support for incumbent local exchange carriers.*"

Providers of last resort must be able to deploy infrastructure to provide service to all customers, even those who live in high cost to serve areas. For rural carriers, reverse auctions would be part of a piecemeal solution that ignores the benefits of fixing the identical support fiasco first, with an end result of decoupling rural carriers from the cost-based rate-of-return model. The implications of such an approach could be to jeopardize the viability of these rural carriers and frustrate the attainment of universal service in areas where there are few providers capable of fulfilling provider of last resort responsibilities. This would appear to be quite contrary to the Joint Board's recommendation of a provider of last resort.

The Commission would have controlled fund growth if not for the identical support rule

In one sense, reverse auctions appears to be a proposal to ameliorate problems resulting from the largest error made in implementing the Telecommunications Act of 1996 (TA 96): the identical support rule. We submit that addressing that problem first is a

more prudent public policy direction. It would also appear from the data currently in the record that reverse auctions do not constitute the competition that was envisioned in TA 96. One may argue that such competitive bidding is actually anti-competitive per TA 96, at least with respect to a customer's access to competitive alternatives. In the proposed reverse auction approaches, carriers are only on an equal basis once every bidding cycle. If an existing rural wireline carrier were to be unsuccessful in a reverse auction proceeding, it is unclear as to how the Commission would intend to address confiscation issues.[23]

Reverse Auctions raise significant public policy issues for high cost to serve areas and should not be implemented initially in these areas

Implementing a reverse auction approach for rural carriers could have unintended consequences, including an inability to raise capital[24] and evolve appropriate levels[25] of service.

It appears that a key to the success of a reverse auction approach is an exacting statement of work. As with any fixed-price bidding system, the success of the contract will depend entirely upon the quality of the statement of work that forms the basis of the proposal. We anticipate that the Commission would intend to define a static set of supported services.

[23] While Chairman Martin indicated in some of his prior statements (e.g., to Senator Stevens on September 12, 2006 at the Senate Commerce, Science and Transportation Committee hearing) that an adequate transition would be contemplated, it is not clear that the Commission may supersede intrastate depreciation rates in light of the *Louisiana* standard.

[24] Comments of CoBank, WCD No. 05-337 and CCD No. 96-45, October 10, 2006, page 2: "*Reverse auctions present more uncertainty because they are a risky approach to high cost support, which will cause the cost of debt to increase. CoBank respectfully urges the FCC to pursue a path of determining high-cost universal service support without undermining the viability of the incumbent.*"

[25] Comments of the OPASTCO, WCD No. 05-337 and CCD No. 96-45, October 10, 2006, page 12: "*Reverse auctions do not naturally encourage network upgrades and service quality improvements*."

Since any services outside of this definition will not qualify as supported services, the ability to evolve services capabilities is seriously compromised as the auction winner may have no incentive to spend beyond the proscribed service level. This seems contradictory to the administration's goals and Congressional support present for an evolution to broadband networks.

When the Commission considered the reverse auction concept a decade ago, there was no public consensus on how to structure competitive bidding to make it reduce the overall amount of support.[26] And, a decade ago, the decision was made to not pursue reverse auctions. If the current Commission chooses to "reverse" this prior decision, we respectfully submit that carriers other than rural wireline carriers should be the subject of such an experiment. Given the uncertainty regarding such an approach, and the lack of empirical data[27] as to what constitutes a successful auction scenario, we believe rural carriers are not the proper subset on which to experiment in this regard.

Rural carriers often are the only provider of ubiquitous and high-quality service[28] in a service area.

<u>Reverse auctions would create an uncertainty with respect to capital recovery and retard the deployment of rural infrastructure</u>

Rural carrier telecommunications networks necessitate investing large amounts of capital in inherently long-lived plant assets. These investments are possible when lenders

[26] Recommended Decision, CC Docket No. 96-45 (Federal-State Joint Board on Universal Service), November 6, 1996, paragraph 334.
[27] "*The Use of Reverse Auctions for Provision of Universal Service*" Professor Dale E. Lehman, Attachment to comments of the National Telephone Cooperative Association, WCD No. 05-337 and CCD No. 96-45, October 10, 2006, stating in part: "*while the track record of reverse auctions utilized in new service areas is of limited relevance to the U.S., theoretical evidence of reverse auctions in areas with existing infrastructure has not been studied, and scant empirical evidence of their usefulness exists*."
[28] Rural carriers are measured against the 99.999% standard of reliability, not the "fewest number of dropped calls" as cellular carriers claim in their network and cable television advertisements.

have a reasonable certainty of debt repayment[29] and investors/stockholders/cooperative members are afforded an opportunity to receive a compensatory rate-of-return.

Under the proposed reverse auction scenario, universal service support would not be predictable over the long term. After the contract period expires, support for an area would be re-auctioned. In the subsequent period, the initial bidder, who will have made long-term investments to serve a rural area, would only retain its revenues if it submitted the winning second bid. This type of uncertainty would certainly not provide sufficient incentive for efficient, long-term investment strategies that are prerequisite to infrastructure deployment in low density, high cost to serve areas of the country.

Without adequate network performance standards firmly in place, the Commission will have fired the starting gun for a race to the bottom in terms of service quality

The enforcement of service quality standards could be a difficult task for the Commission. In a competitively bid contract scenario, the purchasing party has the obligation to enforce the terms of the contract upon the bidder. At the same time, the financial incentives for the winning bidder are to perform the work at a lower cost than was bid. In order to prevent this natural incentive to cut costs resulting in a degradation of service, some form of oversight by a regulatory authority would be required.

Reverse auctions would create no incentive to invest after the contract, and would be especially acute in the later years of a contract cycle. For example, carriers would be unable to justify investing in long-lived assets in the eighth or ninth year of a ten year contract period when faced with the possible loss of support in year eleven.

[29] Conversely, lenders available to rural carriers will be unwilling to provide new capital if there is significant uncertainty regarding the ability to meet principal and interest obligations.

Other important policy questions that the Commission must consider include: How does the Commission propose to monitor the winner's performance and how does the Commission intend to handle the provision of service when carriers exit high cost to serve markets if they are not the successful auction bidder?

In this regard, the Commission must be cautious to recognize the interdependence that wireless carriers have on wireline networks. The mobility provider depends on the wireline provider in its call completion architecture. Current wireless, VoIP, and satellite networks require a connection to land line infrastructure to provide full functionality. This network reality is documented in *Wireless Needs Wires: The Vital Role of Rural Networks in Completing the Call*, published by the Foundation for Rural Service in March, 2006. This paper states in part:

> *Without thoughtful consideration by policymakers of the challenges of providing wireless services in rural America, as well as the dependence of wireless services on wireline networks, portions of the nation are likely to remain underserved . . .Most importantly, one must recognize that without the underlying wireline network, wireless networks could not exist in their current form. In spite of this obvious fact, large wireless carriers and policymakers alike continue to pursue practices and policies that will in fact undermine the critical wireline network. While discussions on how to modify reciprocal compensation, access charges, and universal service continue, attention must be placed on ensuring these mechanisms are capable of maintaining the fiscal health of that wireline network.*

<u>From a rural carrier perspective, the first phase is for others</u>

At paragraph 24 of the Reverse Auctions NPRM, the Commission seeks comment on "*how to ensure the universal availability of services under a reverse auction mechanism. Specifically, how should the carrier of last resort obligations be defined, and on whom should they be imposed*?"

A related question that must also be answered is what are the "costs" from a public policy perspective for reverse auction winners that are ultimately unable to perform universal service functionalities? Historically, the "provider of last resort" (POLR) designation has provided a reasonable assurance that customers in remote regions of the country will have access to communications services. An important part of the POLR package has been the availability of universal service support. The reverse auction proposals do not appear to address an adequate fallback[30] position for customers in rural areas where the "winner" is unable to meet its commitment. This leads to another public policy question that must be answered: How would the Commission propose to mitigate a large carrier from low balling a bid to win the auction, and then ignore the low-density portion of the area? While this may not be important to 90+% of the customers, it is of vital importance to the potentially disenfranchised 10%. We encourage the inclusion of a rural incumbent carrier exemption in any approach to reverse auctions.

We are also concerned about the suggestion in paragraph 38 and footnote 81 of the Reverse Auction NPRM for using forward-looking cost models to estimate reserve prices in rural areas. The record over the last decade has yet to refute the problems associated with applying forward-looking models to rural areas that was first detailed empirically in the work of the Rural Task Force. We summarize some of the continuing issues of applying these models for rural study areas in pages 26-29 of these comments.

[30] The Reverse Auction NPRM discussion concerning awarding a single winner seemingly conflicts with the recognition that wireline and wireless services are complementary, and not substitutable.

JOINT BOARD RECOMMENDED DECISION ISSUES

In addition to the identical support problem and the reverse auction debate, several other important issues must be discussed relative to long-term universal service reform.

Cost-based recovery remains the best approach for rural carriers

One of the notable successes the Commission has enjoyed with its implementation of TA 96 has been the performance of rural carriers operating in a system based on their embedded costs.

Regulatory successes in the rural segment include the continued viability of incumbent providers of last resort, thus achieving the TA 96 statutory goals of universal service coverage, while enabling the deployment of broadband availability to many rural ILEC customers. For rural carriers, proposals that move away from embedded costing will tend to have the effect of decoupling rural carriers from the cost-based rate-of-return model. The implications of such an approach could be to jeopardize the viability of these rural carriers and frustrate the attainment of universal service in areas where there are few providers capable of fulfilling carrier of last resort responsibilities. This would appear to be contrary to the Joint Board's recommendation of a provider of last resort.

Problems remain with forward-looking models

Despite significant effort by several entities, the quest for acceptable forward-looking models for rural carriers remains elusive.

The criteria for success remain rigid

Cost models that yield accurate and representative results remain costly to build and more importantly maintain. A model must be developed with a requisite level of sophistication so that it is capable of handling the vastly different circumstances between urban[31] and rural service areas. This includes tasks such as properly identifying relevant factors, understanding the relationships amongst and between each factor, and then obtaining sufficient data to appropriately model the network configuration and cost. This type of work is time consuming and time sensitive, as the network continues to evolve.

The competitive paradigm is evolving

The modeler is faced with a moving target. The need to achieve accuracy demands granularity, and granularity requires that the modeler capture large amounts of data. These requirements produce a resource intensive scenario, one that is expensive to complete.

These challenges are exacerbated by the fact that the advances of the last decade require a reexamination of just what is "the" forward-looking technology that should be modeled. In addition, earlier models were developed under an assumption that competition was not present and thus a wireline network would be built to all locations where service was to be provided. Any new modeling should account for the changed competitive environment, including a review of the level of competition in each area to

[31] Carriers currently extolling the virtues of sub-wire center granularity seem to ignore the scope and scale benefits they receive from serving their urban customers, or attempt to "address" this issue with a single sentence referencing competition in the urban market. While expedient for the sake of advocacy, it is disingenuous for such carriers to simply ignore such economies of scope and scale in their filings, as the hundreds of thousands (or in some cases millions of customers) provide the ability to support high cost areas either through explicit or implicit support.

be modeled and a review of the forward-looking assumptions as to how many and which locations will be served by the forward-looking network model.

Roads are not available in some rural, high cost to serve areas

The reference by some parties to road-based network modeling indeed merits additional investigation on the part of the Commission. However, during the pendency of this review, certain facts concerning rural service areas must be kept in mind. One fact is that many rural service areas have no roads. An example of this situation was referenced[32] in our October 10, 2006 comments (page 13) to the Commission on reverse auctions. Without very careful consideration of all the implications of applying cost modeling to rural areas, one unintended consequence in rural areas would be to leave many customers as if they were standing near the Cordova antenna - out in the cold.

The geography and math remains the same

The Commission has previously recognized that the costs of rural carriers are higher than non-rural carriers. This was demonstrated empirically in the Rural Task Force's (RTF) White Paper 2,[33] and this research was corroborated in NECA's *Trends in Telecommunications Cost Recovery: The Impact on Rural America* report released in October, 2002.

[32] An example of the challenges facing rural carriers serving extremely remote areas is found in an article in US Telecom's *Communications Crossroads* Summer 2006 edition. In the cover story *Going the Distance*, the challenges facing Alaska carriers are documented. In the portion of the article about Cordova Telephone Co-op, the story states: *Cordova lies at sea level, but just one mile away – and 2,500 feet up, atop Heney Ridge – is a key microwave and cellular relay station that enables the co-op to send a microwave signal for nearly 35 miles and cell signals for 20. The relay station is covered by snow seven months a year, winds routinely hit 200 miles an hour and snow sticking to the antenna routinely builds out horizontally as much as 15 feet.*

[33] "The Rural Difference", Rural Task Force White Paper 2, released January 2000.

In *The Rural Difference*, the Rural Task Force quantitatively detailed key differences between urban and rural carriers, including but not limited to differences in costs for switching capacity and various expenses and overheads that were driven by differences in the rate calculation denominator.

Any new model development will need to be validated against such rural circumstances, and inputs to the model would need to be verified as reasonable. History has shown us that this process for the Synthesis Model took roughly 24 months. It is reasonable to expect a similar time frame, or perhaps an even longer one considering the additional steps now required[34].

Disaggregation of Support

At paragraph 16, the Identical Support Notice poses questions concerning the level of disaggregation of a CETCs costs. While disaggregation of support has, to some degree, depending on the view of the advocate, served the public policy needs to which it was designed, any mandatory disaggregation approach to be applied to all carriers would miss the mark in several key respects.

First, the rules promulgated at 54.315 provided carriers options due to the variety of circumstances facing carriers subject to Part 54 rules. Carriers facing limited competition or carriers with relatively homogeneous service areas would not benefit from disaggregating their federal universal service support.

[34] With increased competition between network providers, the sensitivity of cost data has increased and it is likely to be more difficult to gather such cost information from non-proprietary sources than it was when the Synthesis Model was developed.

Second, there are no questions posed in the Notice as to how to provide verification or enforcement that competitive carriers are properly reporting "captured" lines in the proper disaggregation zone. The record to date contains anecdotal evidence that some lines appear to be reported based on the level of support potentially available to that carrier, as opposed to where the customer resides or maintains an address of record. If the Commission were to adopt some form of mandatory disaggregation, the impact would be analogous to removing a fist from a swimming pool. Once the fist is removed, there is no evidence that it was ever there. Mandatory disaggregation[35] without attention to where CETCs are reporting lines would have a similar indiscernible impact.

Three Separate Fund Issues

There are public policy benefits to creating three separate universal service funds, not the least of which is that wireline and wireless are complementary, and not substitutable services. As the Commission stated in part at paragraph 9 of the Identical Support Notice: "*First, they did not foresee that competitive ETCs might offer supported services that were not viewed by consumers as substitutes for the incumbent LEC's supported service. . . . Thus, rather than providing a complete substitute for traditional wireline service, these wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service.*"

[35] If the solution to moving from an identical support scheme is for all carriers to be on a cost-based system, it may be necessary to reexamine the need for disaggregation. If each carrier will receive support based on its own costs, it would appear that a major part of the reason for carriers to perform disaggregation activity will have been removed.

The Commission should redefine the operational definition of broadband

Few, if any observers believe that the current Commission definition for broadband of 200 kilobits per second is adequate. In fact, continuing with such a definition will not drive the desired public policy result, even with a proposed separate broadband support fund.

A proper working definition is needed as a catalyst to drive results to the level desired. Several parties, including FCC Commissioners[36], have lamented where the United States ranks in terms of broadband penetration rates as compared to other countries, several of which are more densely populated. Key Congressional leaders have called for specific levels of capacity to be available in years such as 2010 and 2015, which would require considerable upgrades to current configurations.

The task of selecting the "correct" definition, especially in rural areas, is challenging, given the rapid pace of technological development. Picking a precise number (e.g., 10 vs. 20 Mbps) may prove more difficult than an alternative approach. This alternative approach draws from the TA 96 implementation theme known as "comparability." What the Commission may choose to consider is a metric that measures whether the broadband standard meets a test of "comparability" with what is commonly offered in urban areas. This type of approach could be developed in a dynamic and transitioning technological environment, with a review of applications and services in the urban areas being considered appropriate on a "comparable basis" for rural areas as well.

[36] As Chairman Martin offered in his February 1, 2007 written statement to the U.S. Senate Committee on Commerce, Science & Transportation: "Broadband technology is a key driver of economic growth. The ability to share increasing amounts of information, at greater and greater speeds, increases productivity, facilitates interstate commerce, and helps drive innovation."

The Commission may have provided a starting point for such comparability discussions with its conclusion at the March 19, 2008 meeting related to broadband data collection speed tiers. In the Bureau presentation at that meeting, eight new speed tiers were specified: first generation data at 200 kbps to 768 kbps; basic broadband tier 1 at 768 kbps to 1.5 megabits per second; broadband tier 2 at 1.5 Mbps to 3 Mbps; broadband tier 3 at 3 Mbps to 6 Mbps; broadband tier 4 at 6 Mbps to 10 Mbps; broadband tier 5 at 10 Mbps to 25 Mbps; broadband tier 6 at 25 Mbps to 100 Mbps; and broadband tier 7 for any service providing speeds greater than 100 Mbps. Several obvious questions arise with regard to comparability: Do carriers need to be in the same tier to be comparable?; Or within one tier to be comparable?; What percentage of subscribers need to be in the tier of comparison? We anticipate a vigorous public policy debate.

In expressing his frustrations with the initial level of funding for broadband as recommended in the Joint Board Recommended Decision, Commissioner Copps' references to the amount of money spent fifty years ago on the interstate freeway system is an appropriate comparison. Like the railroads in the 19th century, the development of the interstate freeway system was a major milestone in the 20th century. As stated by then President Eisenhower on February 22, 1955:

"*Our unity as a nation is sustained by free communication of thought and by easy transportation of people and goods. The ceaseless flow of information throughout the Republic is matched by individual and commercial movement over a vast system of interconnected highways crisscrossing the country and joining at our national borders with friendly neighbors to the north and south. . . . Together, the united forces of our communication and transportation systems are dynamic elements in the very name we bear – United States. Without them, we would be a mere alliance of many separate parts.*"

The Commission has in its hands the opportunity[37] to launch a milestone of the 21st Century – an ubiquitous broadband infrastructure. The choices made in this proceeding will in part determine how "broad the ribbons[38] of broadband" will be.

Mobility providers should not be allowed to delay the transition from the identical support system

Most parties agree that the Commission should move with considerable purpose to develop balanced long-term solutions to the universal service conundrum. Recent actions, especially in ex parte presentations by wireless carriers, seem to indicate a desire to prolong the orderly transition from the identical support era. The Commission should not permit these delaying tactics. Further, several of the proposals currently in the record, such as reverse auctions, could easily require considerable time to develop and implement[39]. If the Commission selects WiCAC as a proper course of action, the WiCAC proposal would be able to be implemented within the recommended timeframe for implementation of long-term solution sets.

[37] Perhaps the rural carriers that have already made significant investment in broadband will someday be known as the pioneers of the broadband revolution. The current proposal for the broadband fund is biased toward carriers that have not previously invested in broadband infrastructure, including some of the largest carriers in the country. It seems ironic that several of the carriers with the most financial resources at their disposal may be the biggest initial beneficiaries of a separate broadband support fund, after previously being unwilling to invest in an expanded broadband infrastructure outside their metropolitan high-density service areas.

[38] In his book, *At Ease: Stories I Tell to Friends* (Doubleday and Company, Inc., 1967), President Eisenhower explains in the chapter "Through Darkest America With Truck and Tank", the experiences in his days as a young army officer and as the Commander of Allied Forces in Europe that served as the catalyst for his conceiving of the idea of a federal highway system: "*The old convoy had started me thinking about good, two-lane highways, but Germany had made me see the wisdom of broader ribbons across the land.*" President Eisenhower's "grand plan" announced in 1954 led to the legislation enacted in 1956 that created the Highway Trust Fund to accelerate the construction of the interstate highway system. It remains to be seen as to what vision is taken in this 21st century in determining how broad the ribbons of broadband will be in the United States. President Eisenhower argued for the interstate highway system for the purpose of national defense. It may be necessary for the proponents of an expanded broadband support fund to extol the virtues of a more ubiquitous broadband network as a part of a national defense strategy.

[39] Reverse auction implementation tasks include, but are not limited to: defining discrete areas to auction, determining what type of package bids are acceptable, establishing auction reserves, establishing safeguards in the case that bidders fail to serve customers, etc.

Respectfully submitted

Via ECFS on 4/17/08

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